# Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02(f)-17–04 OF 2018(W)
ZAWAWI SALLEH, HASNAH HASHIM AND HARMINDAR SINGH FCJJ
1 MARCH 2021

*Tort — Defamation — Defamatory statements — Statements made by first respondent during press conference — Appellants sued respondents for damages premised on defamation — Whether impugned statements in their natural and ordinary meaning had conveyed the meaning that first appellant had used second appellant's money as collateral to obtain loan from bank for purchase of condominiums — Whether impugned statements in their natural and ordinary meaning had conveyed the meaning that first appellant and his family had misappropriated second appellant's money to purchase condominiums for personal use of first appellant and his family and not on behalf of second appellant — Whether impugned statements were defamatory of appellants — Whether publication must be taken to have been viewed as a whole — Whether this was a bane and antidote situation — Whether respondents had proved defence of justification — Defamation Act 1957 s 8*

The first appellant in the present appeal was the chairman and director of the National Feedlot Corp Sdn Bhd ('the second appellant') and also the husband of Datuk Seri Shahrizat, a Member of Parliament. The first respondent was the vice president of Pakatan Keadilan Rakyat ('PKR') and also a Member of Parliament. The appellants had filed a claim against the respondents for defamation in respect of statements made by the first respondent during a press conference on 7 March 2012 ('the impugned statements'). The appellants submitted that the impugned statements in their natural and ordinary meaning had conveyed the meanings that: (a) the first appellant had used the second appellant's money as collateral and/or support to obtain a loan from Public Bank for the purchase of eight condo units in the KL Eco City project; and (b) the first appellant and his family had misappropriated the second appellant's money to purchase the eight condo units for the personal use of the first appellant and his family and not on behalf of the second appellant. In dismissing the appellants' claim, the High Court judge had concluded that a reading of the whole statement of the first respondent during the press conference was primarily addressed at the first appellant's wife and not the first appellant himself, as such, it was not defamatory against the first appellant. The High Court further found that defence of justification was proven as there was substantial truth in the press conference which was on the conflict surrounding

the wife of the first appellant when she was a Member of Parliament for Lembah Pantai. The Court of Appeal affirmed the decision of the High Court, hence, the present appeal. The issues for the court's consideration were: (i) whether the impugned statements, as a matter of law and fact, were defamatory of the appellants; and (ii) whether the respondents had proved, on a balance of probabilities, the defence of justification.

**Held**, dismissing the appeal with costs to the respondents and affirming the orders made by the courts below:

(1) This was not really a bane and antidote situation. It was rather a case whether upon a consideration of the entire statement, and not just a minor part, there were matters which were defamatory of the appellants. This was a question of fact to be determined and assessed by the standard of the ordinary, reasonable and fair-minded reader or viewer. The court would prefer to accept the view in *Charleston and another v News Group Newspapers Ltd and another* [1995] 2 All ER 313 that the publication must be taken to have been viewed as a whole especially when considering whether any sting contained in the headlines, for example, had been neutralized by the context when viewed as a whole (see paras 30 & 34).

(2) The courts below accepted the reasoning that upon a reading of the whole statement, the sting of the press statement by the first respondent was aimed primarily at the wife of the first appellant, who was the Member of Parliament for Lembah Pantai, at the material time, when the upheaval of the squatters in Kg Abdullah Hukum was undertaken to make way for the KL Eco City project. The courts below concluded that, as a matter of fact, the ordinary reasonable reader would not have arrived at the conclusion that read in its entirety, the statement was defamatory of the appellants. The court in the present appeal had no reason to disagree with these findings except for the reference by the Court of Appeal to the bane and antidote example (see paras 35 & 37).

(3) The real question for determination related to the impression created in the mind of the ordinary, reasonable viewer after viewing the whole press statement. In the court's assessment, such person would not pay any attention to the alleged defamatory matter complained of which was in effect one sentence in a very long press statement instead be focused only on the major part of the press statement concerning the wife of the first appellant. That was the main sting which because of its focused ameliorated the effect of the subject matter of complaint which was, in effect, that one sentence. That one sentence was meant to be only a precursor or introduction to the main sting in that it was the revelation by Rafizi Ramli of the misuse of funds that led to the first respondent raising new questions about the conflict of interest of the first appellant's wife in

the purchase of the condominiums. No action had since been filed by the first appellant's wife in respect of these allegations (see para 38).

(4) The defence of justification could be found in s 8 of the Defamation Act 1957. Based on the said provision, only substantial justification of libel was required, and it was not necessary to prove the truth of every word of the libel. In the present case, it was not disputed that a sum of RM71.4m, which was a part of the public funds unutilised, had been deposited as the second appellant's fixed deposit account in Public Bank. It was certainly not a coincidence that the loan facilities came from the same bank where the RM71.4m deposit was placed. It was common knowledge that banks would not simply offer loans unless they were satisfied that the customer seeking the loans was in position to repay the said loan. It was therefore only logical that the RM71.4m deposit in the name of the second appellant would more than satisfy Public Bank of the appellants' financial credibility. The first appellant failed to disclose his sources of income to finance the purchase of the condominiums. On the evidence, it was plain that the appellants had used the RM71.4m deposit as leverage for obtaining the loans from Public Bank. It followed that the defence of justification had been made out and the respondents could not, by any stretch, be liable for damages for defamation (see paras 40–41 & 44–48).

**[Bahasa Malaysia summary**

Perayu pertama dalam rayuan ini adalah pengerusi dan pengarah National Feedlot Corp Sdn Bhd ('perayu kedua') dan juga suami kepada Datuk Seri Shahrizat, seorang Anggota Parlimen. Responden pertama adalah naib presiden Pakatan Keadilan Rakyat ('PKR') dan juga Anggota Parlimen. Perayu-perayu telah memfailkan tuntutan terhadap responden-responden kerana memfitnah berkenaan dengan pernyataan yang dibuat oleh responden pertama semasa sidang media pada 7 Mac 2012 ('pernyataan yang disanggah'). Perayu-perayu berhujah bahawa pernyataan yang disanggah tersebut dalam maksud semula jadi dan biasa telah menyampaikan maksud bahawa: (a) perayu pertama telah menggunakan wang perayu kedua sebagai jaminan dan/atau sokongan untuk mendapatkan pinjaman dari Public Bank untuk pembelian lapan unit kondominium dalam projek KL Eco City; dan (b) perayu pertama dan keluarganya telah menyalahgunakan wang perayu kedua untuk membeli lapan unit kondominium untuk kegunaan peribadi perayu pertama dan keluarganya dan bukan bagi pihak perayu kedua. Dalam menolak tuntutan perayu, hakim Mahkamah Tinggi telah menyimpulkan bahawa pembacaan keseluruhan pernyataan responden pertama semasa sidang media tersebut menunjukkan bahawa ia pada dasarnya ditujukan kepada isteri perayu pertama dan bukan perayu pertama sendiri, oleh itu, ianya bukan fitnah terhadap perayu pertama. Mahkamah Tinggi seterusnya mendapati bahawa pembelaan justifikasi telah dibuktikan kerana terdapat kebenaran yang besar dalam sidang media tersebut iaitu berkaitan dengan konflik yang menyelubungi isteri perayu

pertama ketika dia menjadi Anggota Parlimen Lembah Pantai. Mahkamah Rayuan mengesahkan keputusan Mahkamah Tinggi, oleh itu, rayuan ini. Perkara-perkara yang perlu dipertimbangkan oleh mahkamah adalah: (i) sama ada pernyataan yang disanggah tersebut, di dalam isu undang-undang dan fakta, adalah fitnah terhadap perayu-perayu; dan (ii) sama ada responden-responden telah membuktikan, di atas imbangan kebarangkalian, pembelaan justifikasi.

**Diputuskan**, menolak rayuan dengan kos diberikan kepada responden-responden dan mengesahkan perintah-perintah yang dibuat oleh mahkamah-mahkamah di bawah:

(1) Kes ini sebenarnya bukanlah situasi racun dan penawar. Ini adalah kes sama ada apabila mempertimbangkan keseluruhan pernyataan, dan bukan hanya sebagian kecil pernyatann, terdapat perkara-perkara yang memfitnah perayu-perayu. Ini adalah persoalan fakta yang harus ditentukan dan dinilai berdasarkan standard pembaca atau penonton yang biasa, wajar dan berfikiran adil. Mahkamah lebih suka menerima pandangan di dalam kes *Charleston and another v News Group Newspapers Ltd and another* [1995] 2 All ER 313 bahawa penerbitan mestilah dianggap telah dilihat secara keseluruhan terutama ketika mempertimbangkan sama ada terdapat fitnah dalam tajuk utama berita, misalannya, telah dineutralkan oleh konteks apabila dilihat secara keseluruhan (lihat perenggan 30 & 34).

(2) Mahkamah-mahkamah di bawah menerima alasan bahawa setelah membaca keseluruhan pernyataan tersebut, 'sting' kenyataan media oleh responden pertama ditujukan terutamanya kepada isteri perayu pertama, yang merupakan Anggota Parlimen Lembah Pantai, pada waktu yang material iaitu semasa gangguan ke atas penduduk setinggan di Kg Abdullah Hukum dilakukan untuk memberi jalan bagi projek KL Eco City. Mahkamah-mahkamah di bawah menyimpulkan bahawa, berdasarkan fakta, pembaca wajar yang biasa tidak akan membuat kesimpulan bahawa apabila dibaca secara keseluruhannya, pernyataan tersebut adalah fitnah ke atas perayu-perayu. Mahkamah dalam rayuan ini tidak mempunyai alasan untuk tidak bersetuju dengan dapatan-dapatan tersebut kecuali rujukan oleh Mahkamah Rayuan kepada contoh racun dan penawar (lihat perenggan 35 & 37).

(3) Persoalan sebenar untuk penentuan adalah berkaitan dengan tanggapan yang dibuat dalam fikiran penonton biasa dan wajar setelah melihat keseluruhan kenyataan media tersebut. Dalam penilaian mahkamah, individu tersebut tidak akan mengambil perhatian terhadap perkara yang dikatakan fitnah yang diadukan tersebut yang hanyalah satu ayat dalam pernyataan akhbar yang sangat panjang sebaliknya akan fokus hanya kepada bahagian utama pernyataan akhbar mengenai isteri perayu

pertama. Itulah 'sting' utama yang mana disebabkan fokus ke atasnya telah meningkatkan kesan perkara pokok dalam aduan iaitu satu ayat tersebut. Satu ayat tersebut hanya dimaksudkan sebagai pendahuluan atau pengenalan kepada 'sting' utama iaitu pendedahan oleh Rafizi Ramli mengenai penyalahgunaan dana yang menyebabkan responden pertama membangkitkan persoalan-persoalan lain mengenai konflik kepentingan isteri perayu pertama dalam pembelian kondominium-kondominium tersebut. Tidak ada tindakan yang difailkan oleh isteri perayu pertama sehubungan dengan tuduhan ini (lihat perenggan 38).

(4) Pembelaan justifikasi terdapat di dalam s 8 Akta Fitnah 1957. Berdasarkan peruntukan tersebut, hanya sebahagian besar justifikasi libel yang diperlukan, dan tidak perlu membuktikan kebenaran setiap perkataan libel. Dalam kes ini, tidak dipertikaikan bahawa sejumlah RM71.4 juta, yang merupakan sebahagian daripada dana awam yang tidak digunakan, telah dimasukkan sebagai akaun simpanan tetap perayu kedua di Public Bank. Ini bukanlah suatu kebetulan di mana kemudahan pinjaman tersebut diberikan oleh bank yang sama di mana deposit RM71.4 juta tersebut didepositkan. Sudah menjadi pengetahuan umum bahawa bank tidak akan sewenang-wenangnya menawarkan pinjaman kecuali mereka berpuas hati bahawa pelanggan yang memohon pinjaman tersebut boleh membayar pinjaman tersebut. Oleh itu, adalah logik bahawa deposit RM71.4 juta atas nama perayu kedua lebih daripada memuaskan Public Bank berkenaan dengan kredibiliti kewangan perayu. Perayu pertama gagal mendedahkan sumber pendapatannya untuk membiayai pembelian kondominium-kondominium tersebut. Berdasarkan keterangan, jelas bahawa perayu-perayu telah menggunakan deposit RM71.4 juta tersebut sebagai keumpilan untuk mendapatkan pinjaman dari Public Bank. Ini menunjukkan bahawa pembelaan justifikasi telah dibuktikan dan responden-responden tidak boleh, dengan apa cara sekali pun, bertanggung jawab ke atas ganti rugi atas fitnah (lihat perenggan 40–41 & 44–48)]

**Cases referred to**

*Chakravarti v Advertiser Newspapers Ltd* [1998] HCA 37, HC (refd)
*Chalmers v Payne* (1835) 2 Cr M & R 156 (refd)
*Charleston and another v News Group Newspapers Ltd and another* [1995] 2 All ER 313, HL (folld)
*Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371, CA (refd)
*Curistan v Times Newspapers Ltd* [2009]2 WLR 149, CA (refd)
*Dato' Seri Anwar bin Ibrahim v The New Straits Times Press (M) Sdn Bhd & Anor* [2010] 2 MLJ 492; [2010] 3 AMR 514, HC (refd)
*Farquhar v Bottom* [1980] 2 NSWLR 380 (refd)
*Hepburn v TCN Channel Nine Pty Ltd* [1983] 2 NSWLR 682 (refd)

*JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334 (refd)
*Jones v Skelton* [1963] 3 All ER 952, PC (refd)
*Keluarga Communication v Normala Samsudin* [2006] 2 MLJ 700, CA (refd)
*Keogh v Incorporated Dental Hospital of Ireland* (1910) 2 Ir R 577 (refd)
*Lee Kuan Yew v Derek Gwyn Davies & Ors* [1990] 1 MLJ 390, HC (refd)
*Lewis v Daily Telegraph Ltd* [1962] 2 All ER 698, CA (refd)
*Mirror Newspapers Ltd v World Hosts Pty Ltd* (1979) 141 CLR 632, HC (refd)
*Morgan v Odhams Press Ltd and another* [1971] 2 All ER 1156, HL (refd)
*Peck v Tribune Co* (1909) 214 US 185, SC (refd)
*Prager v Times Newspapers Ltd* [1988] 1 WLR 77, CA (refd)
*Slatyer v Daily Telegraph Newspaper Co Ltd* (1908) 6 CLR 1, HC (refd)
*Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 2 MLJ 56 (refd)
*Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393, HC (refd)
*Workers' Party: Tay Boon Too; Workers' Party v Attorney-General* [1975] 1 MLJ 47 (refd)

**Legislation referred to**

Defamation Act 1957 s 8

**Appeal from:** Civil Appeal No W-02(NCVC)(W)-481–03 of 2016 (Court of Appeal, Putrajaya)

*Muhammad Shafee bin Abdullah (Sarah Abishegam, Noor Farhah bt Mustaffa, Wan Arfan bin Wan Osman, Iskandar Nor bin Zulkarnain and Mohd Farhan bin Muhammad Shafee with him) (Shafee & Co) for the appellants.*
*Razlan Hadri Zulkifli (Joshua Kevin, Damien Chan, William Lee, Danny Soong Hou Ming and Chai Tze Jing with him) (Kevin & Co) for the respondents.*

**Harmindar Singh FCJ (delivering judgment of the court):**

INTRODUCTION

**[1]** This appeal concerns aspects of the law of defamation and in particular, what constitutes defamatory matter. The appeal was filed pursuant to the granting of leave on the following questions:

1. In an impugned composite statement, some of which is defamatory and some may not, was the trial judge correct in holding that the Plaintiff was prohibited in bringing about the defamatory action by complaining only of the defamatory statement, and

2. In considering whether the sting of the defamation far outweighs the parameters of contextual interpretation, should the court only consider the following principles of interpretation of the true meanings of the impugned words:

A (a) impugned words that are complained to the relevancy of the rest of the publication in a contextual setting;

(b) treating the impugned words that are complained as the bane and to discover, if relevancy is shown, if the rest of the other statements could possibly be the antidote.

B

**[2]** The appellants had filed a claim against the respondents for damages for defamation in the Kuala Lumpur High Court in respect of statements made by the first respondent, Nurul lzzah bt Anwar, during a press conference on 7 March 2012. The High Court, after a full trial, dismissed the appellants' C claim. The instant appeal arose from the decision of the Court of Appeal which upheld the decision of the High Court. The High Court, in dismissing the appellants' claim, had found that the appellants had failed to prove their claim against the respondents on two principal reasons, namely:

D (a) that the appellants had failed to prove, on a balance of probabilities, that the impugned statements were defamatory of the appellants; and

(b) that even if the impugned statements were defamatory, the defendants had proved on the balance of probabilities, the defence of justification.

E

THE MATERIAL FACTS

**[3]** The relevant background facts leading to the filing of the present appeal are well stated in the judgments of the courts below and in the parties' F submissions. It is to the credit of the parties that most of the facts were agreed prior to trial. The salient facts, as far as they are relevant to the present appeal, can be restated as follows. For convenience, the parties will be referred to as they were in the court of first instance or by their names as abbreviated interchangeably.

G

**[4]** In the year 2007, the National Feedlot Corp Sdn Bhd ('NFCorp') was established as the main integrator company of the National Feedlot Centre ('NFC') to fulfil the government's policy and objective of increasing the national production of meat by reducing dependency on imported beef. The H Chairman and Director of NFCorp ('the second plaintiff') is Dato' Sri Dr Mohamad Salleh bin Ismail ('the first plaintiff') who is the individual most responsible for the establishment and execution of a project to develop, promote, and nurture competency in the farming of beef and cattle for the production of beef and beef products known loosely as the NFC project. Quite I significantly, NFCorp was a family company wholly owned by the first plaintiff and his children.

**[5]** The NFC project was funded by a soft loan of RM250m from the government for NFCorp to run it. Out of the RM250m, all but a sum of

RM71m was drawn down pursuant to the loan agreement with the government. The unutilised funds were then moved, on 12 February 2008, to a fixed deposit account held by the second plaintiff in Public Bank. It was not in dispute that as at 16 February 2012, the fixed deposit account stood at RM71,395,617.

**[6]** In 2011, the operation and performance of the NFC project was audited by the Auditor General. The findings were presented to Parliament in October 2011. The Auditor General's report highlighted the failures of the NFC project and in particular, the weaknesses in the implementation of the said project. This disclosure not surprisingly drew the public's attention to NFCorp. Concerns were raised as public funds were involved. The manner in which the funds was spent became a serious issue and led to a general uproar regarding the perceived failure of the NFC project.

**[7]** In a press conference held on 7 March 2012 which concerned the development of a prime high-end project in Kuala Lumpur known as KL Eco City, Nurul Izzah bt Anwar ('the first defendant'), in her capacity as the Vice President of Pakatan Keadilan Rakyat ('PKR') and a Member of Parliament ('MP'), made certain statements regarding the same issue. Those statements were made based on the exposure by PKR's Director of Strategy, Mohd Rafizi Ramli ('Rafizi') of how public funds of the NFC project had been used as leverage to secure loans for the purchase of high end condominium units in KL Eco City.

**[8]** On the same day, Malaysiakini TV, an internet TV news site of the online news portal Malaysiakini, published the statements made by the first defendant which was viewed by the public at large. Certain parts of the statement ('the impugned statements') became the subject matter of the present defamation suit. The impugned statements were as follows:

> Pendedahan terbaru pada hari ini oleh saudara Rafizi Ramli, bahawa dana awam yang disalurkan dalam Projek Fidlot Kebangsaan (National Feedlot Centre) telah digunakan untuk membeli Iapan unit hartanah mewah di KL Eco City pada nilaian semasa yang mencecah RM12 juta mengundang pelbagai persoalan baru.
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> Pertama, tindakan suami dan keluarga seorang menteri kanan yang dahulunya ahli parlimen kawasan terbabit membeli hartanah tersebut menimbulkan pertembungan kepentingan (conflict of interest) di antara tugas sebagai seorang ahli parlimen dan kemahuan keluarga beliau. You would have access to the plans, development plans of a particular area if you're member of parliament, dan ada kemungkinan, pengetahuan ini digunakan dalam usaha pembelian oleh suami menteri kanan tersebut.

**[9]** As mentioned earlier, the plaintiffs then sued the defendants for defamation in the said publications. The plaintiffs contended that the impugned statements in their natural and ordinary meaning, had conveyed the following meanings, namely that:

(a) the first plaintiff had used NFCorp's money as collateral and/or support to obtain a loan for the purchase of the eight condo units; and

(b) the first plaintiff and his family had misappropriated NFCorp's money to purchase the eight units for the personal use of the first plaintiff and his family and not on behalf of NFCorp.

**[10]** It was also contended by the first plaintiff that the impugned statements were defamatory of him as they could be understood to mean that he is untrustworthy, a criminal, a greedy person, who had used his wife's position for monetary gain, used government and/or public money for personal monetary gain and to live a life of luxury, and that if not for NFCorp's money, he is actually poor and/or a pauper; and finally that the plaintiffs had conspired to cheat and/or misappropriate government and/or public funds.

**[11]** The plaintiffs contended that the impugned statements made by the first defendant, alleging that the first plaintiff had misused government funds for the purpose of acquiring/purchasing eight condo units at KL Eco City were false, incorrect and were defamatory of the plaintiffs. The first plaintiff asserted that he had purchased the eight office units using his own personal funds and that the purchases did not involve NFCorp's money or government funds.

**[12]** The first defendant, in her defence, contended that the impugned statements were made in her capacity as an MP and political figure to articulate the public's concerns over Datuk Seri Shahrizat Jalil's ('OS Sharizat') (wife of the first plaintiff) involvement with the KL Eco City project and the purchase of eight condo units in the KL Eco City wherein issues of misuse of funds for the NFC project were raised.

**[13]** It was also her contention that the impugned statements were not defamatory of the plaintiffs and were made pursuant to credible proof obtained by Rafizi who had made prior disclosures of the misuse of public funds for NFCorp by the first plaintiff and his family members. It was further pleaded that even if the impugned statements were defamatory, the defendants could rely on the defences of justification, fair comment, and qualified privilege to defeat the claim.

PROCEEDINGS IN THE COURTS BELOW

**[14]** After a full trial which involved only two witnesses, the first plaintiff and the first defendant, the High Court dismissed the plaintiffs' claim. Relying on the case of *Keluarga Communication v Normala Samsudin* [2006] 2 MLJ 700, the High Court held that the legal standard in determining whether the impugned statements were defamatory of the plaintiffs is to view the same in the context of the entire article in which the words were published. Applying the test as aforesaid to the entire article published, the learned judge found as a matter of fact that an ordinary reasonable reader would not find the impugned statements to be defamatory of the plaintiffs. Additionally, the learned judge found as a matter of fact that the defence of justification was made out by the defendants.

**[15]** The plaintiffs' subsequent appeal to the Court of Appeal was dismissed and the findings of the High Court were unanimously affirmed. In particular, the Court of Appeal noted:

> [36] We agreed with the learned trial judge in her approach when she undertook the exercise of viewing the impugned statement from a holistic approach. We found the statement to that effect in para 37 of her grounds of judgment where she said:
>
> > It is equally well established that the whole statement must be looked at as a whole and not just selected extracts of the statement ...
>
> [37] We were in complete agreement with the learned trial judge in her approach. She had directed her mind correctly in that regard. Applying that approach, she had concluded that a reading of the whole statement that was given by D1 during the press conference was primarily addressed at Datuk Seri Shahrizat, the wife of the first plaintiff, who undeniably was the Member of Parliament for Lembah Pantai, at the material times when the upheaval of the squatters at Kampung Abdullah Hukum was undertaken, to make way for the high-end development project of what is now known as KL Eco City near the Mid-Valley Megamall Bangsar. D1, being the incumbent Member of Parliament for that constituency, was addressing what she perceived to be an injustice done to the squatters living at Kampung Abdullah Hukum, who had to make way for the huge development for scant compensation. The underlying theme of D1's press statement was the perceived injustice that had been brought to bear by the conflict of interest that happened as the wife of the first plaintiff was the incumbent Member of Parliament at the material time culminating in the purchases of the eight units of condominiums that were part of the KL Eco City Development Project.
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> [38] That was the approach that was undertaken by the learned trial judge in determining the true effect of the impugned statements that were alleged to have been defamatory of the plaintiffs. As alluded to earlier, that approach was not inconsistent with the approach undertaken by this court in the *Normala Shamsuddin* case where the Court of Appeal had ruled that an objective test must be applied and that a meaning which a reasonable person would understand the whole article to mean, must be assigned to it. In trying to achieve that, it needed to be

reiterated that the whole article, and not just the selected impugned statements, would have to be considered so as not to lose the context in which the alleged defamatory statements were published. Viewed as it were, in such a manner, the alleged 'sting' may be fully appreciated. We now reproduce the transcript of D1's press statement dated 7 March 2012 as follows:

> Was Shahrizat involved in KL Eco City project? MalaysiaKini.tv 7 March 2012
>
> NURUL IZZAH ANWAR
>
> Memberikan satu kenyataan berkait dengan property ataupun hartanah di KL Eco City dimana saya telah membawa isu pembangunan sebidang tanah di dalam kawasan parlimen Lembah Pantai yang telah mengetepikan kebajikan rakyat di dalam sidang Dewan Rakyat yang lepas.
>
> Kalau sesiapa yang selalu pergi ke megamall, tahulah bertentangan sahaja ada projek terbesar yang di panggil KL Eco City oleh pembangunan hartanah SP Setia dijalankan secara usahasama dengan DBKL, 60% DBKL, 40% SP Setia, joint venture.
>
> Projek pembangunan hartanah mewah, KL Eco City ini bernilai RM6 billion Gross Development Value, Melibatkan SP Setia, DBKL dan syarikat milik Pergerakan Pemuda UMNO iaitu Yayasan Gerak Bakti Kebangsaan, telah mendapat perhatian ramai berikutan nasib yang menimpa penduduk-penduduk berpendapatan rendah yang mendiami tanah tersebut pada asalnya.
>
> Pendedahan terbaru pada hari ini oleh saudara Rafizi Ramli, bahawa dana awam yang disalurkan oleh Projek Fidlot Kebangsaan (National Feedlot Centre) yang telah digunakan untuk membeli lapan unit hartanah mewah di KL Eco City pada nilaian semasa yang mencecah RM12 juta mengundang pelbagai persoalan baru.
>
> Pertama, tindakan suami dan keluarga seorang menteri kanan yang dahulunya ahli parlimen kawasan terbabit membeli hartanah tersebut menimbulkan pertembungan kepentingan (*conflict of interest*) di antara tugas sebagai seorang ahli parlimen dan kemahuan keluarga beliau. You would have access to the plans, development plans of a particular area if you're member of parliament, dan ada kemungkinan, pengetahuan ini digunakan dalam usaha pembelian oleh suami menteri kanan tersebut.
>
> Dalam kes pembangunan KL Eco City yang melibatkan pemindahan penduduk berpendapatan rendah yang tidak diberikan pampasan yang berpatutan, khusus Kampung Haji Abdullah Hukum, bukan keluarga Haji Abdullah Hukum tapi ada ramai yang tidak mendapat access pada perumahan, dan kebanyakan mereka dipindahkan di apartment Putra Ria dan juga apartment Haji Abdullah Hukum, low cost apartments, certainly. Berlainan macam langit dengan bumi dengan pembangunan yang dirancang di KL Eco City.
>
> Jika beliau, Datuk Seri Shahrizat Jalil, bersedia, Datuk Seri Shahrizat Jalil, untuk menerangkan kepada rakyat samada beliau memainkan apa-apa peranan, mempengaruhi keputusan sehingga menyebabkan pemindahan penduduk berpendapatan rendah di Kampung Abdullah Hukum. Jika beliau mengambil sikap sambil lewa dalam membela nasib penduduk yang terbabit sejak sebuah

syarikat usaha sama diwujudkan pada tahun 2007, ini menimbulkan pertanyaan samada ini ada kena mengena dengan kepentingan keluarga beliau yang berhasrat membeli tanah di KL Eco City.

Persoalan-persoalan moral ini termasuklah jumlah pampasan yang sewajarnya diberikan kepada semua penduduk terbabit, mereka bangkitkan kepada saya, tidak mencukupi dan sebagainya adalah lanjutan daripada isu-isu yang saya bawa di Dewan Rakyat berkenaan ketidakpedulian pimpinan Pemuda UMNO yang mendapat durian runtuh berjumlah RM75 juta daripada projek ini. Kerana tanah pada asalnya, alasan diambil alih oleh Yayasan Gerak Bakti Kebangsaan adalah untuk menjaga kepentingan hartanah Bumiputera, tapi diatas share-swap yang berlaku, mereka mendapat keuntungan durian runtuh, dalam bentuk saham RM75 juta dan SP Setia sekarang mengusahakan tanah tersebut bersama usaha sama DBKL.

Kepimpinan Pemuda UMNO terlibat secara langsung dalam Pembangunan KL Eco City khusus dalam tindakan pemindahan penduduk melalui syarikat YGP Holdings Sdn Bhd yang merupakan rakan kongsi awal KL Eco City iaitu pemaju yang juga anak syarikat kepada SP Setia.

Pengarah-pengarah Yayasan Gerak Bakti YGP Holdings Sdn Bhd, termasuklah Ketua Pemuda UMNO, saudara Khairy Jamaluddin dan pimpinan Pemuda UMNO seperti Datuk Abdul Rahman Dahlan dan Datuk Megat Firdaus Megat Junid. Saya menunggu jawapan daripada Ketua Wanita dan Ketua Pemuda UMNO mengenai penglibatan mereka di dalam sebuah projek yang meminggirkan kepentingan rakyat berpendapatan rendah di Lembah Pantai sementara rakan-rakan kepimpinan Keadilan yang lain mendesak pertanggungjawaban dari keluarga menteri yang menggunakan dana awam untuk membeli harta peribadi.

[39] Having employed the approach of looking at the whole of the press conference by D1, the learned trial judge had concluded that it was not defamatory as against the first plaintiff. She had found that D1 was merely performing her public duty of addressing issues of public concerns as they had impacted on her constituents. She agreed with the submissions of learned counsel for D1 that the issues which D1 had raised in her press conference had taken away the sting of the selected statements from the press conference which the plaintiffs had complained were defamatory against them. The learned trial judge had expressed her findings on whether the impugned statements were defamatory or not in para [66] of her grounds of judgment, thus:

[66] It is clear from a reading of this whole statement that D1's focus was DS Shahrizat rather than her spouse or family. Read as a whole, a reasonable man would, to my mind, consider the statement to be a call to accountability directed at DS Shahrizat as the main thrust of the statement called into question DS Shahrizat's role as a MP for the constituency then and her involvement in the KL Eco City project wherein lay a possible conflict of interest on her part. Throughout the statement it is obvious that D1 was highlighting the plight of the residents of Kg Hj Abdullah Hukum who had been displaced without adequate compensation. The conflict of interest highlighted was in relation to the purchase of the eight units by her husband, the first plaintiff and other family

members which units were constructed in the very place from which the residents of Kg Hj Abdullah Hukum had been evicted.

[40] In para [68] of the same grounds, she spelled out her findings on the alleged 'sting', thus:

[68] Read in that light, it is my finding that 'the sting of the charge' that the plaintiffs complain of cannot be sustained. The plaintiffs cannot pick and choose parts of the press statement and highlight only certain statements as defamatory and turn a blind eye to the rest.

[41] She concluded at para [82] of her grounds that the plaintiffs had failed to prove, on the balance of probabilities that the impugned statements were defamatory of the plaintiffs. With respect, we agreed with her conclusion. In as much as there may be venom in the impugned statements taken in isolation assuming the statements were directed at the plaintiffs, which they were not, but applying the holistic approach as expounded in *Gatley on Libel & Slander* the antidote was also contained in whole press statement which had the effect of ameliorating the alleged 'sting' that was complained of by the plaintiffs.

**[16]** On the defence of justification, the Court of Appeal agreed with the findings of the High Court that there was substantial truth in the press conference which was on the conflict surrounding the wife of the first plaintiff when she was a Member of Parliament for Lembah Pantai. In particular, the Court of Appeal noted:

[43] On justification, the learned trial judge had also made a finding on the conflict of interest that was referred to in the press statement by D1. This appeared in para [84] of her grounds of judgment, like so:

[84] D1 had explained in her testimony why she had said there was a conflict of interest. Questions raised, even in Parliament of the inadequate compensation offered to the displaced residents of Kg Hj Abdullah Hukum went unanswered. Bearing in mind the first Plaintiffs wife was then the MP and head of Wanita UMNO Malaysia and UMNO Youth had interests in the disputed land which was of high commercial value, D1 had raised these issues particularly when it was disclosed by Rafizi through his press statement and bank statements which were not disputed by the Plaintiffs that DS Shahrizat's family members had purchased not I but eight units totaling more than RM8m in value in the Eco City Project, a project that had generated much controversy.

**[17]** The Court of Appeal, in fact, went further to consider the defences of qualified privilege and fair comment and held that both these defences were also made out by the defendants. For reasons that will become apparent later, we need not set out the reasons as to how the Court of Appeal arrived at its decision on these issues.

ISSUES FOR DETERMINATION

**[18]** Following from the leave questions and the arguments raised by the parties, and at the risk of some oversimplification, the broad issues for our consideration and determination are as follows. The first issue is whether the impugned statements, as a matter of law and fact, were defamatory of the plaintiffs. The second issue is whether the defendants had proved, on a balance of probabilities, the defence of justification. To recall the chronology of events, the High Court had decided that the impugned statements were not defamatory and, in any event, the defence of justification was made out by the defendants. These findings were affirmed by the Court of Appeal.

WHETHER IMPUGNED STATEMENTS DEFAMATORY

**[19]** The law in respect of what amounts to defamatory matter is well-settled. An imputation would be defamatory if its effect is to expose the plaintiff, in the eyes of the community, to hatred, ridicule or contempt or to lower him or her in their estimation or to cause him or her to be shunned and avoided by them (see *Dato' Seri Anwar bin Ibrahim v The New Straits Times Press (M) Sdn Bhd & Anor* [2010] 2 MLJ 492; [2010] 3 AMR 514; *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 2 MLJ 56; *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334; *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393; *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371). In order to prove a claim in defamation, it is also essential that the offending words are not only defamatory and that they are published but also that they identify the plaintiff as the person defamed.

**[20]** The defamatory nature of the imputation is to be judged by the ordinary and reasonable members of the community or an appreciable and reputable section of the community (see *Jones v Skelton* [1963] 3 All ER 952; *Peck v Tribune Co* (1909) 214 US 185; *Hepburn v TCN Channel Nine Pty Ltd* [1983] 2 NSWLR 682). The ordinary reasonable person has been held to be one of fair average intelligence (see *Slatyer v Daily Telegraph Newspaper Co Ltd* (1908) 6 CLR 1, who is not avid for scandal (see *Lewis v Daily Telegraph Ltd* [1962] 2 All ER 698) but who may engage in some degree of loose thinking (see *Morgan v Odhams Press Ltd and another* [1971] 2 All ER 1156) and reading between the lines (see *Farquhar v Bottom* [1980] 2 NSWLR 380), but who, at the same time, should not be unduly suspicious (see *Keogh v Incorporated Dental Hospital of Ireland* (1910) 2 Ir R 577).

**[21]** In *Gatley on Libel and Slander* (12th Ed) the authors described the 'ordinary reader' in the following fashion (at para 3.26):

> ... Nevertheless the 'ordinary reader' is perhaps a little closer to reality than the 'reasonable man' of the law of negligence, for the courts are ready to recognize his weaknesses up to a point. He is a sort of half-way house between the unusually suspicious and the unusually naive. He is essentially fair-minded and reasonable but he may be guilty of a certain amount of loose thinking and does not read a sensational article with cautious and critical care ...

**[22]** To ascertain the meaning of the statement or publication, the plaintiff can rely on the natural and ordinary meaning or the innuendo meaning. The consideration of the meaning of the offending words involves an objective test (see *Jones v Skelton*). The offending words must be considered in the context of the whole article and not simply on isolated passages (see *Lee Kuan Yew v Derek Gwyn Davies & Ors* [1990] 1 MLJ 390; *Curistan v Times Newspapers Ltd* [2009]2 WLR 149; *Mirror Newspapers Ltd v World Hosts Pty Ltd* (1979) 141 CLR 632; *Keluarga Communication v Normala Samsudin* [2006] 2 MLJ 700). In this context, *Duncan & Neill on Defamation* (4th Ed) described this principle at paras 5.25 to 5.28:

> In order to determine the natural and ordinary meaning of the statements of which the claimant complains it is necessary to take into account the context in which it appeared and the mode of publication ... It follows from the principles set out above that a claimant cannot select an isolated passage in an article and complain of that alone if other parts of the article throw a different light on that passage.

**[23]** On the same subject of considering the statement as a whole, *Gatley on Libel & Slander* (12th Ed) at para 3.31 had this to say:

> It follows from the fact that the context and circumstances of the publication must be taken into account, that the claimant cannot pick and choose parts of the publication which, standing alone, would be defamatory. This or that sentence may be considered defamatory, but there may be other passages which take away the sting. In this regard, the reasonable reader is assumed to have read the whole article complained of. If 'in one part of the publication something disreputable to the plaintiff is stated, but that is removed by the conclusion, the bane and the antidote must be taken together. (Citations omitted.)

**[24]** This principle is derived from a passage from the judgment of Alderson B in *Chalmers v Payne* (1835) 2 Cr M & R 156 at p 159, where it was observed:

> But the question here is, whether the matter be slanderous or not, which is a question for the jury; who are to take the whole together, and say whether the result of the whole is calculated to injure the plaintiffs character. In one part of this publication, something disreputable to the plaintiff is stated, but that is removed by the conclusion; the bane and antidote must be taken together.

**[25]** This question of whether the defamatory sting of a statement can be neutralised by other sections of the same statement was later decided in the

leading case on the subject, *Charleston and another v News Group Newspapers Ltd and another* [1995] 2 All ER 313 where Lord Bridge observed (at p 319): A

> Whether the text of a newspaper article will, in any particular case, be sufficient to neutralise the defamatory implication of a prominent headline will sometimes be a nicely balanced question for the jury to decide and will depend not only on the nature of the libel which the headline conveys and the language of the text which is relied on to neutralise it but also on the manner in which the whole of the relevant material is set out and presented. But the proposition that the prominent headline, or as here the headlines plus photographs, may found a claim in libel in isolation from its related text, because some readers only read headlines, is to my mind quite unacceptable in the light of the principles discussed above. B C

**[26]** The importance of taking into account the entirety of a publication was highlighted in *Normala Samsudin,* where the trial court had held that a publication in a magazine bore defamatory meanings of the plaintiff including that she (plaintiff) was a person whose marriage bond had a price tag and that for a payment of RM3m, she was bought off her marriage vows. On appeal, the Court of Appeal held: D

> [23] It is our considered view had the learned trial judge taken into account the entirety of the article, he could not possibly have concluded that the words complained of imputed adultery, unchastity or immoral behaviour on the part of the plaintiff or meant that she was a loose charactered woman with lax morals. We therefore find the learned trial judge had erred when he concluded that the words complained of imputed adultery, unchastity or immoral behaviour on the part of the plaintiff by not giving consideration to the words, 'Normala was disappointed because while she avoided temptations, her fidelity has been wasted'. E F

**[27]** In the instant appeal, the plaintiffs (now appellants) submitted that the courts below had failed to consider separately the effect of the impugned statements on the appellants. The court below, it was contended, had failed to apply the rule of relevancy and therefore failed to appreciate that in such a composite statement, some parts of it referred only to the appellants on a separate and distinct matter from some other parts that referred to DS Shahrizat who is a distinct and separate entity dealing with subject matters that have no nexus or relevance to the impugned statement against the former. G H

**[28]** In respect of the bane and antidote arguments, the appellants submitted that the Court of Appeal judges had failed to appreciate that the 'bane and antidote' maxim cannot be applicable in such circumstances, as the bane and sting poured on one entity on a different subject matter cannot be taken away by the alleged antidote forming separate defamatory statements on separate and distinct entities and subjects. I

**[29]** It was further submitted that due to the failure of the learned judges to identify and specify the stings in the defamatory statement, the learned judges had in fact failed to comprehend that there was more than one sting found in the entire impugned statement that is clearly defamatory of the appellants. As a result, the Court of Appeal had misconstrued in analyzing and deciding that only some of the stings of the defamatory statement are relevant to the appellants.

**[30]** In our respectful view, this was not really a bane and antidote situation. It was rather a case of whether upon a consideration of the entire statement, and not just a minor part, there were matters which were defamatory of the appellants. This was a question of fact to be determined and assessed by the standard of the ordinary, reasonable and fair-minded reader or viewer. In short, the issue really is: how would such a reader or viewer assess the statement.

**[31]** Now, of course, in the real world, readers may only look at the headlines or speed read such that they are not interested in the whole article or in what is presented visually. It depends on whether they are in a hurry, as most people are nowadays, or whether they have all the time in the world to read the entire long article. This much was also noted by Lord Nicholls in *Charleston* at p 319:

> Everybody reads selectively, scanning the headlines and turning the pages. One reader, whose interest has been quickened by an eye-catching headline or picture, will pause and read an article. Another reader, with different interests or less time, will read the headline and pass on, leaving the article unread.

**[32]** So, it is really a fiction in the law of defamation that in assessing whether the material in question carries a defamatory meaning, the ordinary, reasonable person is taken to have read, heard or viewed the whole of the material. In other words, although most people may only look at headlines and form their conclusions immediately, the law operates on the basis that the ordinary reasonable person must be taken to have read or viewed the whole material to the bitter end.

**[33]** Similar views were expressed in *Chakravarti v Advertiser Newspapers Ltd* [1998] HCA 37 by Kirby J where the decision of *Charleston* was criticized for overlooking the realities of how changes in technology and presentation has affected how people receive such communications (at p 60):

> Different views have been expressed concerning the care and attention that will be attributed to the ordinary person and the way in which that person considers the matter complained of. Long ago, it was suggested that the ordinary person, being reasonable, would read the entirety of the matter complained of. Such a person would refrain from drawing inferences adverse to the reputation of another simply because part of the publication included matters discreditable to the subject. This reasoning has lately been endorsed by the House of Lords in *Charleston v News*

*Group Newspapers Ltd*. In that case, photographs of the faces of the plaintiffs, well-known television actors, were superimposed upon near-naked bodies of models engaged in pornographic poses. The headline read 'Porn shocker for Neighbours stars'. When the text of the publication was closely examined it contained expressions of purported outrage about a pornographic computer game which could superimpose the faces of individuals without their knowledge or consent upon the bodies of others. Their Lordships upheld the decisions of the primary judge and of the English Court of Appeal, sustaining the publisher's objection that the publications were incapable of being defamatory. They rejected the proposition that 'the prominent headline, or as here the headlines plus photographs, may found a claim in libel in isolation from its related text, because some readers only read headlines'. They declared that such reasoning was 'unacceptable'. Respectfully, I cannot agree with their Lordships' opinion. In my view it ignores the realities of the way in which ordinary people receive, and are intended to receive, communications of this kind. It ignores changes in media technology and presentation. It removes remedies from people whose reputation may be greatly damaged by casual or superficial perception of such publications. And it overlooks the purpose of defamation law which is to provide redress when reputations are damaged in fact, not to reserve remedies to those cases only where detailed and thorough analysis of the matter complained of has been undertaken. I agree with the criticisms which have been voiced about Charleston. Many people, including not a few judges and jurors, do not look beyond headlines and photographs. If this is the environment in which reputations may be harmed, it would be contrary to the purposes of the law of defamation to withhold redress from cases where harm was held to be done. To the extent that dicta in *Charleston* or other cases suggest that the courts should attribute to the recipients of matter published in the mass media a close and careful attention to the entirety of the item published, I would not follow that opinion. I would not adopt its reasoning as part of the common law of Australia. To do so would be to defy common experience and, if I may say so, common sense.

**[34]** On our part, we would much prefer to accept the view in *Charleston* that the publication must be taken to have been viewed as a whole especially when considering whether any sting contained in the headlines, for example, has been neutralised by the context when viewed as a whole. We are nevertheless prepared to accept that in an exceptional case, where the particular facts and circumstances so warrant, the impugned material may be defamatory when viewed in isolation. A lot, we think, depends on the way new technology is being used to mislead viewers intentionally by some media either for the sake of sensationalism to deepen their pockets or to promote some insidious agenda by their backers. It cannot be right and just that there be no remedy in such a case.

**[35]** Be that as it may, the arguments taken in the instant appeal are on a related but different footing. The courts below accepted the reasoning that upon a reading of the whole statement, the sting of the press statement by the first defendant was aimed primarily at the wife of the first plaintiff, who was the

Member of Parliament for Lembah Pantai, at the material time, when the upheaval of the squatters in Kampung Abdullah Hukum was undertaken to make way for the KL Eco City project.

**[36]** The focus of the first defendant's press statement was the perceived injustice done to those squatters by having to make way with scant compensation. The focus was also on whether there was any conflict of interest by the wife of the first plaintiff when eight units of condominiums were purchased in the KL Eco City project by her family members including the first plaintiff.

**[37]** The courts below concluded that, as a matter of fact, the ordinary reasonable reader would not have arrived at the conclusion that read in its entirety, the statement was defamatory of the appellants. We have no reason to disagree with these findings except for the reference by the Court of Appeal, but not the High Court, to the bane and antidote example which was rather unfortunate.

**[38]** In our view, the real question for determination relates to the impression created in the mind of the ordinary, reasonable viewer after viewing the whole press statement. In our assessment, such person will not pay any attention to the alleged defamatory matter complained of which was in effect one sentence in a very long press statement and instead be focused only on the major part of the press statement concerning the wife of the first plaintiff. That was the main sting which because of its focus ameliorated the effect of the subject matter of complaint which was, in effect, that one sentence. That one sentence was meant to be only a precursor or introduction to the main sting in that it was the revelation by Rafizi of the misuse of funds that led to the first defendant raising new questions about the conflict of interest of DS Sharizat in the purchase of the condominiums. No action has since been filed by DS Sharizat in respect of these allegations although a suit was filed against Rafizi for the statements which he had made.

**[39]** For these reasons, we would agree with the findings of the Court of Appeal and dismiss the appeal. For the sake of completeness, we will also deal with the next issue of justification.

WHETHER JUSTIFICATION MADE OUT

**[40]** The defence of justification can be found in s 8 of the Defamation Act 1957 which states:

> In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only

> that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

**[41]** What this means is that it is not necessary to prove the truth of every defamatory allegation if the words not proved to be true do not materially injure the plaintiff's reputation. In short, there only needs to be substantial justification of the whole libel and it is not necessary to prove the truth of every word of the libel. 'As much must be justified as meets the sting of the charge, and if anything be contained in a charge which does not add to the sting of it, that need not be justified' (see *Workers' Party: Tay Boon Too; Workers' Party v Attorney-General* [1975] 1 MLJ 47).

**[42]** Where a claimant complains that words are defamatory of him in their natural and ordinary meaning, the defendant is entitled to justify those words in any meaning which those words are capable of conveying to a reasonable man (see *Gatley on Libel and Slander* (12th Ed) para 27.8 citing *Prager v Times Newspapers Ltd* [1988] 1 WLR 77 ('Prager')). In *Prager*'s case, it was held, per Purchas and Nicholls LJJ:

> It is open to a defendant, who seeks to justify the words complained of in a sense other than that attributed to them by the plaintiff, to plead what he contends to be the real meaning of the words, but he is not obliged to do so provided that he spells out sufficiently the meaning which, if the Jury find it to be the real meaning of the words, he will seek to justify.

**[43]** Now, the sting in the present case, as alleged by the appellants, is the allegation that public funds were used ('digunakan') to purchase eight units of property in KL Eco City at the present market value of RM12m. The appellants claimed that the defamatory imputation which ensued was that they had misused public funds allocated by the government for the development of the NFC for their own personal gain contrary to public interest.

**[44]** In this respect, it was not disputed that a sum of RM71,395,617 (RM71.4m), which was part of the public funds unutilised, had been deposited as the second appellant's fixed deposit account in Public Bank. The appellants claim that it was misleading to state that the said fixed deposit account was used as collateral or leverage in order to secure and obtain loan facilities for the purchase of the eight KL Eco City properties. Based on the evidence of the Public Bank's loan facilities offer dated 23 May 2011, it was asserted that the RM71.4m was not used as collateral or leverage but it was in fact the titles to the KL Eco City properties that were used as security for the loan offered. The Public Bank's Offer had, in any event, expired two months before the publication of the defamatory statement.

**A** **[45]** In essence, the appellants were trying to assert that the RM71.4m deposit played no part in Public Bank's decision to offer the loan facilities. With respect, the overwhelming inference from what transpired at the trial is that this cannot be true. It is certainly not a coincidence that the loan facilities came from the same bank where the RM71.4m deposit was placed. It is common **B** knowledge that banks will not simply offer loans unless they are satisfied that the customer seeking the loans is in a position to repay them. If it is true that the banks only require the security of the titles for loans to be provided, then anyone who buys property would *ipso facto* be granted a bank loan.

**C**

**[46]** Common sense also dictates that the banks would prefer a customer who has the means to repay loans so that they can earn tidy profits rather than be saddled with foreclosure actions which are less profitable and can sometimes lead to losses for the banks. It is for this reason that banks require strong **D** evidence of the ability to repay. It is therefore only logical that the RM71.4m deposit in the name of the second appellant would more than satisfy Public Bank of the appellants' financial credibility.

**[47]** It was therefore a matter of some significance that when challenged to **E** do so, the first appellant failed to disclose his sources of income to finance the purchase of the eight units of condominiums apart from making bare assertions as duly noted by the High Court judge. Considering the possible damaging inferences that may arise from the RM71.4m deposit, the first appellant ought to have called someone from Public Bank to support his **F** claims. It was therefore plain on the evidence that the appellants had used the RM71.4m deposit as leverage for obtaining the loans from Public Bank. The fact that the loan offer had expired is of little consequence. In fact, it would not be far-fetched to deduce, from the entirety of the evidence at the trial, and in the sense as noted above, that there has been misuse of public funds for personal **G** gain.

**[48]** It follows that the defence of justification, as upheld by the courts below, had been made out and the respondents could not, by any stretch, be liable for damages for defamation. The appeal should also be dismissed on this ground. **H** As noted earlier, the Court of Appeal had also found the defences of qualified privilege and fair comment to have been made out on the evidence adduced at the trial. In view of the earlier finding on defamatory matter and defence of justification, we find it quite unnecessary to go into these defences.

**I** CONCLUSION

**[49]** In conclusion, and for the reasons mentioned, the leave questions need not be answered as they are quite irrelevant to the facts and circumstances of this case. The courts below were entitled to come to the findings on the core

issues as they did. Accordingly, the appeal is dismissed with costs to the respondents. The orders made by the courts below are hereby affirmed.

*Appeal dismissed with costs to respondents; orders made by courts below affirmed.*

Reported by Dzulqarnain bin Ab Fatar